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CORRESPONDENCE.

Editor of Virginia Law Register:

In the October (1904) number of the REGISTER there was published an article written by me entitled, "Sales Under Deeds of Trust," etc. The object of this communication is to call attention to various mistakes which appear in the article as published, concerning which we have had a good deal of correspondence.

These mistakes were not in the manuscript when it left my hands, nor am I in any way responsible for them; but since you have explained to me that you have been unable to fix at your end of the line the responsibility for the making of these changes in my manuscript, I have, in accordance with your suggestion, prepared a table of *errata*, which I will request you to publish in this connection.

After inspecting the manuscript, which you returned to me shortly after the publication of the article, I find that I omitted numeral 20 from the text matter; it, however, appeared in its proper place in the notes, and its omission in the text matter did not in any way disturb the accuracy of the other citations. But, as you know, this mistake, for which I would have been responsible does not appear in the article as published. I understand from you that your associate, Mr. Gregory, is responsible for the splitting into two parts of the sentence referred to in the table of *errata*, thereby destroying the sense.

Very truly, E. R. F. WELLS.

NOTE.—The table of errata will be found in the Miscellany Department. We are sincerely sorry for the errors and ask the pardon of Mr. Wells and our readers. THE EDITORS.

OUR WASHINGTON LETTER.

NATIONAL INCORPORATION—CORPORATIONS IN THE DISTRICT OF COLUMBIA.

Editor Virginia Law Register:

The first annual report of the Commissioner of Corporations, James R. Garfield, presenting a plan for the federal control of corporations doing an interstate business, is likely to receive as much or more consideration than any report submitted to the President by his cabinet officials. In a preliminary way this report points out that under present industrial conditions secrecy and dishonesty in promotion, overcapitalization, unfair discrimination by means of transportation and other rebates, unfair and predatory competition, secrecy of corporate administration, and misleading or dishonest financial statements, are generally recognized as the principal evils. It is further conceded in the report that the chief difficulty in the way of providing ample remedy has been the conflict between federal and state authority as to jurisdiction over many of the acts of great industrial agencies, and the uncertainty of the extent of regulation exercised or to be exercised by the federal government over agencies in both state and interstate commerce. Indeed, the present situation of corporation law has been summed up roughly by saying that its diversity is such that in operation it amounts to anarchy. The states consulting their own commercial interests

have manifested an inevitable tendency towards legislation providing for the lowest level of lax regulation and granting extreme favor towards incorporators regardless of the interests of others who may be injuriously affected by such legislation. The remedy for these evils is best stated in the exact language of Commissioner Garfield's report:

"I therefore beg to suggest that Congress be requested to consider the advisability of enacting a law for the legislative regulation of interstate and foreign commerce under a license or franchise, which in general should provide as follows: (a) The granting of a federal franchise or license to engage in interstate commerce. (b) The imposition of all necessary requirements as to corporate organization and management as a condition precedent to the grant of such franchise or license. (c) The requirement of such reports and returns as may be desired as a condition of the retention of such franchise or license. (d) The prohibition of all corporations and corporate agencies from engaging in interstate and foreign commerce without such federal franchise or license. (e) The full protection of the grantees of such franchise or license who obey the laws applicable thereto. (f) The right to refuse or withdraw such franchise or license in case of violation of law, with appropriate right of judicial appeal to prevent abuse of power by the administrative officer."

The foregoing plan as outlined by Commissioner Garfield is not new, and the idea, while it may not have had its origin in, yet is directly in line with, a proposition as made by the Standard Oil Company, advocated before the Industrial Commission appointed by President McKinley, on September 8, 1899, through John D. Archbold, using the following language:

"If you should ask me, gentlemen, what legislation can be imposed to improve the present condition, I answer that the next great and, to my mind, inevitable step of progress in the direction of our commercial development lies in the direction of national or federal corporations. If such corporations should be made possible under such fair restriction and revision as should rightfully be attached to them, any branch of business could be freely entered upon by all comers, and the talk of monopoly would forever be done away with. Our present system of state corporations, almost as varied in their provisions as the number of states, is vexatious alike to the business community and to the authorities of the various states. Such federal action need not take away from these states their right to taxation or police regulation, but would make it possible for business organizations to know the general terms on which they could conduct their business in the country at large. Lack of uniformity in the laws of various states as affecting business corporations is one of the most vexatious features attending the business life of any great corporation to-day, and I suggest for your most careful consideration the thought of a federal law."

It is not expected that legislation looking to the carrying into effect of the recommendations of Commissioner Garfield will be initiated at the present session of Congress, and the measure when drafted will be drafted on the initiative of Congress, and not by Mr. Garfield.

Whether such ideas looking to the federal control of corporations engaged in interstate commerce will ever be embodied in practical legislation is a question about which there may be differences of opinion. The Garfield plan, however, can not be considered as purely theoretical. It was discussed seriously at a re-

cent meeting of the American Political Science and Economic Association by no less an authority than Mr. Edward D. Whitney, of New York. The latter pointed out that effective restriction by means of a national corporation law by graduated taxation would raise constitutional questions not yet fully settled. The proposed scheme has also been criticised as overcentralizing and overburdening the govermental system at Washington, while its constitutionality has also been called into question. In all probability the proposition looking to the enactment by Congress of a national corporation law has received considerable momentum of late because of an examination that has been made into that section of the Code of the District of Columbia relating to the incorporation of companies. The extreme liberality of this law is amply illustrated by the fact that during two years ending December 31, 1904, 2,211 companies, with a capitalization aggregating more than three billions of dollars, have been incorporated in the District, only a few of which were intended to do business within the District. The total revenue to the District of Columbia from these companies has amounted to something like two thousand dollars. During this same period the State of New Jersey has received more than $3,000,000 in revenue in franchise taxes and in corporation fees from foreign corporations. There is no such thing in the District as an incorporation fee or a franchise tax. It is simply sufficient to pay the recorder of deeds what is known as a recording fee, which varies from seventy-five cents to one dollar and twenty-five cents. This District law is grossly defective in that it is silent as to where the meetings of the stockholders may be held, and while it provides that ten per centum of the capital stock must be paid in prior to the commencement of business, yet there is nothing in the law to make this provision effective. Perhaps the most serious injury that has been done as a result of the enactment of this law consists in the impression that has gone out to the country that it is a federal statute, and consequently that the companies organized thereunder are under the special protection of the laws of the United States. As a matter of fact, while Congress enacted the law, it was expressly enacted for the District of Columbia, and is therefore local in its nature and operation just as any other act passed by Congress designed to have special application to any of the territories. These and other criticisms and abuses of the law have called prominent attention to the seeming necessity of a national corporation law. Besides, they have resulted in proposed legislation amending the present corporation law of the District of Columbia by providing that companies organized under such law shall be taxed at the rate of forty cents on each thousand of its capital stock; and providing that the minimum tax so paid shall be twenty-five dollars; and that at least ten per centum of the capital stock shall be paid up and all of it subscribed for before a charter is permitted to be filed. The foregoing proposition may become a law before this letter appears in print. The natural effect of such a law would be to cause prospective incorporators to seek other places as the legal homes of their companies. A curious question has arisen in connection with the District law as to the right of an incorporation organized thereunder being sued in a state court to remove the cause to a federal court. A citizen of the District has no such right, because the District is not a state as referred to in the Constitution of the United States. The political status of the District is that of a municipal corporation. A municipal corporation has not the power to create a corporation, but congress is the

legislative body having constitutional power to pass laws governing the District of Columbia. This line of reasoning would lead to the conclusion that since the District has not of itself the power to create a corporation, such power cannot be delegated to it, and that acts of Congress relating to the District are of national authority, though of limited application; hence any corporation organized under the act is organized under the laws of the United States. It has been settled that the federal courts have jurisdiction of a cause to which a national bank is party, since the law under which it was organized was necessarily put in issue. Corporations of the District have therefore the right of removal if the law under which they are organized is constitutional.

This conclusion does not express the view of the writer, but is herein set forth in the hope that some discussion may be thereby set in motion.

Washington, D. C. E. HILTON JACKSON.